

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

HUGHETTE CRUMPLER,	:	Case No. C-1-02-131
	:	
Plaintiff	:	(Judge Susan J. Dlott)
	:	
v.	:	
	:	
TELXON CORPORATION et al.,	:	
	:	JOINT MOTION FOR EXTENSION OF
Defendants/Third-Party Plaintiffs,	:	TIME TO FILE REPLY MEMORANDA
	:	IN SUPPORT OF MOTIONS FOR
v.	:	SUMMARY JUDGMENT OF
	:	PLAINTIFF HUGHETTE CRUMPLER
JOHN W. PAXTON, SR.,	:	AND THIRD-PARTY DEFENDANT
	:	JOHN W. PAXTON, SR.
Third-Party Defendant.	:	

Pursuant to the Court's standing Order relating to pretrial procedure and S.D. Ohio Civ. R. 7.3, and for the reasons set forth in the attached Memorandum in Support, Plaintiff Hughetta Crumpler and Third-Party Defendant John W. Paxton, Sr. respectfully move the Court to grant them a one-week extension of time, from October 3, 2003 until October 7, 2003, to file their Reply Briefs in support of their Motions for Summary Judgment. A memorandum in support is attached.

Respectfully submitted,

s/ Robert A. McMahon

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MEMORANDUM IN SUPPORT

Crumpler and Paxton respectfully submit that they each should be granted a short, one-week extension of time to file their Reply Briefs in support of their Motions for Summary Judgment for each of the following reasons:¹

A. Telxon and Symbol had seven weeks to respond to Crumpler's and Paxton's Motions for Summary Judgment.

On July 31, 2003 and August 1, 2003, respectively, Crumpler and Paxton separately filed dispositive motions. Between Defendants' first request for an extension (six weeks was requested and two weeks was granted) and their subsequent filing of a brief that was in violation of the Court's page requirements (resulting in another two weeks passing before Defendants filed a brief complying with the Court's local rules), Telxon and Symbol ultimately had seven weeks (*i.e.*, a de facto four week extension) to respond to Crumpler and Paxton's motions. Crumpler and Paxton merely request a short accommodation of one additional week to file their replies.

B. Crumpler and Paxton must reply to a 50-page brief.

Crumpler and Paxton both need additional time to file their reply memoranda because the Court permitted Telxon and Symbol to file a 50-page brief in opposition to Crumpler's 20-page memorandum and Paxton's 30-page memorandum. Basic principles of fairness require that Crumpler and Paxton receive a short extension of time to reply to such a lengthy brief.

¹ Pursuant to the Court's local rules, counsel for Crumpler and Paxton contacted counsel for Telxon and Symbol in order to ask their consent to the requested short extension and thus avoid the necessity of bringing this matter to the Court's attention via this motion. Unfortunately, counsel for Telxon and Symbol refused to consent to the extension. Specifically, on September 29, 2003, counsel for Crumpler and Paxton telephoned attorneys James Wertheim and Kimberly Smith and, since they were told by a receptionist that neither Mr. Wertheim nor Ms. Smith was in the office but that Ms. Smith was expected to be in shortly, left a message for Ms. Smith. Attorney Jon Pinney subsequently telephoned Paxton's counsel, Michael Manzler, who requested the one-week extension. Mr. Pinney stated he would discuss the request with co-counsel and call Mr. Manzler back. Mr. Pinney subsequently left a message for Mr. Manzler stating that Defendants would not consent to the extension of time.

C. Crumpler and Paxton need additional time due to numerous unanticipated evidentiary issues.

Telxon and Symbol filed a two-volume Appendix of materials in opposition to Crumpler's and Paxton's Motions for Summary Judgment. Included among those materials are thirteen "Declarations," eleven of which come from witnesses who were never deposed. More significantly, almost half of these Declarations come from individuals whom Telxon and Symbol never disclosed to Crumpler or Paxton as witnesses or individuals with knowledge, whether in their Initial Disclosures or at any time during discovery. Finally, Telxon and Symbol also filed one Declaration from an individual, Robert A. Goodman, Esq., an attorney with Defendants' legal counsel Goodman Weiss Miller LLP, whom they represented to the Court would *not* be used as a witness (in order to avoid being disqualified). Crumpler and Paxton now must devote time, energy and resources to addressing these evidentiary matters that never should have arisen at this stage of the proceedings.

D. Crumpler's and Paxton's counsel scheduled other matters and commitments around the original briefing schedule.

Counsel for Crumpler and Paxton scheduled their other cases and obligations around the original briefing schedule. They planned to have replied to a brief filed by Telxon and Symbol at the end of August, not on September 19th. By delaying the filing of their Memorandum in Opposition to such an extent -- and then filing a 50-page brief and all of the Declarations and other materials -- Telxon and Symbol have made it impossible for Crumpler and Paxton to fully address the various legal and evidentiary issues in only two weeks. They need one additional week, which is more than reasonable under the circumstances.

WHEREFORE, Plaintiff Hughette Crumpler and Third-Party Defendant John W. Paxton, Sr. respectfully request that the Court enter an Order granting their motion and providing them an extension of time until and including October 10, 2003 to file their reply memoranda in support of their Motions for Summary Judgment.

Respectfully submitted,

s/ Robert A. McMahon

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CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2003, the foregoing Joint Motion for Extension was electronically filed with the Court using the CM/ECF system which will send notification of such filing to the following: Drew A. Carson and James A. Wertheim, Goodman Weiss Miller LLP, 100 Erieview Plaza, 27th Floor, Cleveland, Ohio 44114-1882; and Robert A. McMahon, Eberly McMahon Hochscheid LLC, 3700 Eastern Avenue, Cincinnati, OH 45226.

s/ Michael A. Manzler

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